

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC., et
al.,

Defendants.

CIVIL ACTION NO. 04-CV-11136GAO

SUPPLEMENTAL AFFIDAVIT OF DONALD BARRETT

I, DONALD BARRETT, under oath, declare as follows:

1. I am a principal shareholder of defendants Direct Marketing Concepts (“DMC”) and ITV Direct, Inc. (“ITV Direct”), and am responsible for the management and operations of each company. I make this affidavit on the basis of my own personal knowledge of the facts set forth herein and could testify competently thereto if called to do so.

2. I have reviewed the supplemental materials filed by the Federal Trade Commission (“FTC”) on June 21, 2004 concerning two products that the FTC alleges have been marketed and sold by ITV Direct. These products are the Stress Shield and the 7 Day Miracle Cleanse. Neither of the products identified by the FTC are manufactured by DMC or ITV. In addition, as explained below, neither product is currently being sold by DMC or ITV. Prior to receiving the FTC’s filing on June 21, 2004, the FTC had never contacted us about either of these products. Nonetheless, prior to the submission by the FTC, all connection between ITV and these products had been voluntarily terminated by ITV.

3. With regard to the Stress Shield, no product was ever manufactured or sold to any consumers. Neither DMC nor ITV ever had any product whatsoever in inventory nor were any consumers ever charged for any sales of the product. Rather, on July 17, 2003, almost a year ago, and well before the FTC has raised any issues with the Supreme Greens with MSM product, a “test” infomercial was filmed for the Stress Shield, featuring Kevin Thomas. This infomercial

was run only four times in total in 2004 and no product was ever sold in connection with the infomercial. The purpose of the “test” infomercial was solely to determine market interest in the product, but no product was actually sold through the test and no revenues were derived from the airing.

4. In addition, when the FTC raised concerns with the Supreme Greens with MSM infomercial in March and April 2004, we undertook a comprehensive review of all product and infomercial proposals that had been provided to us by various manufacturers of dietary supplements, including the Stress Shield infomercial. As part of this review, we determined that the controversial nature of the infomercial for the Stress Shield was subject to the same concerns the FTC had raised about the Supreme Greens infomercial, and on that basis voluntarily placed a permanent ban on running the infomercial in the future. The infomercial has not run since April 2004 and it will not be run in the future. This final airing in April 2004 would have been reflected in the May 2004 IMS report cited by the FTC. However, the June 2004 IMS report should reflect that there were no airings of the infomercial in May 2004 and there are none scheduled in the future.

5. With regard to the 7 Day Miracle Cleanse, a product developed by Anthony Paris Deaguero, a/k/a the “Health Man”, ITV has never filmed any infomercial in connection with that product and has no intention of doing so. Rather, Mr. Deaguero filmed an infomercial several years ago as the “Health Man” with a production company that has no connection to ITV, DMC or any other company with which I am affiliated. That is the infomercial that has been submitted by the FTC and we had no involvement in its production whatsoever. In April 2004, well after this infomercial was filmed and had been airing in many media markets, I was introduced to Mr. Deaguero and he traveled to ITV’s offices in Beverly, Massachusetts to meet with me. Mr. Deaguero stated that he had a product, the 7 Day Miracle Cleanse, that had been the subject of a previously produced infomercial that had been airing nationally with some success. He believed that an updated infomercial could enhance sales of the product and requested that ITV become

involved in producing such an infomercial. In this meeting we discussed whether Mr. Deaguero possessed scientific substantiation for the claims in the infomercial, and he stated that he did.

6. We agreed to “test” the Health Man infomercial in May 2004 and ran the infomercial in several markets. In connection with agreeing to test the show, and consider producing a new infomercial, however, we specifically requested that Mr. Deaguero provide us with the substantiation for the claims he had made in his previous infomercial. He confirmed again that he possessed such substantiation and that he would provide it to us. He also stated that he had been airing the Health Man infomercial across the country in numerous media markets and had not received any contact from the FTC nor had the FTC raised any concerns over its content. Nonetheless, we insisted that he provide us adequate substantiation before we would agree to film the new infomercial or begin a broader media campaign for the product.

7. In May 2004, ITV also agreed to process some Internet orders for Mr. Deaguero and control of the website address was briefly moved to ITV Direct. However, the ITV-controlled website that was established contained no health claims about the product, because we were still awaiting the substantiation for those claims from Mr. Deaguero. Over the next three weeks, Mr. Deaguero provided us with some substantiation for his claims, but not sufficient information for ITV to believe it could continue the relationship. On June 8, 2004, ITV terminated its relationship with Mr. Deaguero, and requested that any connection between Mr. Deaguero’s website and ITV be dissolved. ITV also notified all managers that the relationship between ITV and Mr. Deaguero was terminated. At no time was any infomercial produced by ITV, nor were health claims made on the ITV website. In total, ITV processed less than 125 orders for Mr. Deaguero through the website link. We currently have no relationship with Mr. Deaguero or with the 7 Day Miracle Cleanse. We have no understanding of whether Mr. Deaguero continues to run his infomercial or whether the FTC has sought to stop such airings or sought substantiation from Mr. Deaguero. ITV, however, is not receiving any telephonic or Internet orders in connection with the product.

8. Contrary to the affidavit submitted by the FTC, a consumer that types in www.7dmc.com will not be connected to ITV's website or be directed to ITV in any way. Moreover, consumers calling the telephone number on the www.7dmc.com website will not be connected to ITV, but will be connection to the offices of 7DMC in Burbank, California. I have attached copies of the relevant website pages as Exhibit A.

9. The FTC's affidavit concerning its communications with ITV in connection with the Stress Shield product appears at odds with ITV's limited involvement with the Stress Shield product. Specifically, as of June 17, 2004, all of ITV's sales personnel would have been informed that ITV was not selling and did not have in its inventory any of the Stress Shield product. If a salesperson claimed to be able to take an order for the Stress Shield product on June 17, 2004 as alleged by the FTC, then that salesperson was mistaken and should have advised the caller that the product was not available. Specifically, the product was not included in ITV's database of available products, and the salesperson should have been advised that the product was not for sale. Because the product was not in the system, there also would have been no means to process the customer's credit card in the system, and I do not understand the FTC investigator to be asserting that a credit card was charged. In addition, because the product was never included in the sales interface, there was no way for ITV to create an autoship entry for the product in the automated autoship system. Therefore, the salesperson should have also been made aware in connection with the request for autoship pricing that the product was not available for sale, either as a one-time purchase or on autoship. Nonetheless, had the order somehow been placed and their credit card processed, we would have notified the customer immediately that there was no product in inventory and advised them that no charges would be assessed or a full credit would be provided.

10. As I have testified previously, ITV takes its sales policies very seriously and all customers have the right to cancel an order at any time. While discounts are often provided in connection with the autoship program, such discounts are clearly communicated to customers and confirmation of agreement to the program is obtained from the customer. Customers are

also provide written disclosure of the program and are free to cancel or terminate an order at any time. We are investigating the call referenced by the FTC investigator, and will take appropriate remedial action if necessary and warranted by the facts. However, because the alias the investigator used in connection with the call was not provided, we are somewhat limited in our investigation of this matter.

11. As to the call placed by the FTC investigator on June 17, 2004 in connection with the 7 Day Miracle Cleanse, the infomercial tape obtained by the FTC from the IMS must have been one that was created prior to the termination of ITV's relationship with Mr. Deaguero and his company on June 8, 2004. I am aware that certain of the test tapes provided to the IMS contained phone numbers directing callers to a number managed by ITV. We are unaware of how many such tapes are in existence, but upon termination of ITV's relationship with Mr. Deaguero, we have directed that all such tapes be destroyed. ITV is not currently receiving any orders from customers for Mr. Deaguero's product. In the event that a caller were to inquire about purchasing the 7 Day Miracle Cleanse, our salespeople have been told to instruct the caller that ITV no longer carries the product and cannot process orders for the product. Whether this communication occurred with the FTC investigator is absent from the FTC investigator's supplemental declaration.

12. In light of the FTC's continuing concerns over the Supreme Greens with MSM infomercial and other infomercials involving ingestible products, ITV determined several weeks ago that it would no longer produce or air any infomercials involving ingestible products. As of the date of this affidavit, I am unaware of any infomercial for any ingestible product that is being aired by ITV or DMC, and ITV, DMC and I have no plans to run any such infomercial in the future.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 23rd day of June, 2004 at Beverly, Massachusetts.

/s/Donald Barrett
DONALD BARRETT